

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 64-016-16-1-5-00148-17
Petitioner: Drenka Kragulj-Korac
Respondent: Porter County Assessor
Parcel: 64-05-14-402-004.000-016
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated her appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) on August 26, 2016. The PTABOA issued its final determination on December 22, 2016. Petitioner timely filed her petition with the Board on February 2, 2017.
2. On February 9, 2017, the Board issued a Notice of Defect in Appeal Form because Petitioner filed a copy of the appeal with the Portage Township Assessor instead of the Porter County Assessor.
3. Petitioner did not respond to the Board’s defect notice. Thus, on March 21, 2017, the Board issued its determination denying Petitioner’s claim due to her failure to comply with the notice of defect provisions under Indiana Code § 6-1.1-15-4(c), which gives a petitioner 30 days from the date of a defect notice to cure identified defects and file a corrected petition that substantially complies with the Board’s instructions for completing the petition.
4. On April 3, 2017, Petitioner filed a request for a rehearing explaining the circumstances that gave rise to the defect in the petition. On April 4, 2017, the Board granted Petitioner’s request.
5. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
6. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on December 14, 2017. Neither the ALJ nor the Board inspected the property.

7. Petitioner Drenka Kragulj-Korac was sworn and testified. Peggy Hendron, the Porter County Deputy Assessor, was sworn and testified for Respondent.¹

Facts

8. The subject property is a single-family dwelling located at 2809 Woodward Street in Portage.
9. For 2016, the property was assessed at \$14,800 for the land and \$118,100 for the improvements for a total of \$132,900.
10. On the Form 131, Petitioner requested an assessed value of \$14,800 for the land and \$104,000 for the improvements for a total of \$118,800.

Record

11. The official record contains the following:
 - a. A digital recording of the hearing

- b. Exhibits:

Petitioner presented no exhibits.

Respondent Exhibit 1:	Appeal information from the Board’s website,
Respondent Exhibit 2:	Property record card (“PRC”) for the subject property,

Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of defect,
Board Exhibit C:	Notice of final determination,
Board Exhibit D:	Request for rehearing,
Board Exhibit E:	Rehearing request granted,
Board Exhibit F:	Notice of hearing,
Board Exhibit G:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that the assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475,

¹ Petitioner’s sister, Dorothy Lawver, was present but not did not testify.

478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.

13. First, Ind. Code § 6-1.1-15-17.2(a) “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.”
14. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The assessed value decreased from \$136,000 in 2015 to \$132,900 in 2016. Consequently, Petitioner has the burden of proof.

Summary of Contentions

17. Petitioner’s case:
 - a. The subject property is a small, two-bedroom, one-bathroom house that Petitioner purchased four years ago for approximately \$69,000. *Kragulj-Korac testimony*.
 - b. Petitioner claims to have received a statement from the assessor’s office showing the assessed value had increased to \$160,000, which she contends is a significant increase from the prior year even though she has made no improvements or additions to the property.² *Kragulj-Korac testimony*.

² On several occasions during the hearing, Petitioner stated the assessed value was \$160,000, but that is not supported by the PRC. The PRC shows \$160,000 as a “Work-in-Progress” value for 2017. Further, when Petitioner filed the Form 130 on August 26, 2016, she listed the value as \$132,900.

- c. Petitioner accepts that the assessed value can increase regularly and that she must pay her fair share of taxes. Nonetheless, she believes the assessed value for 2016 is excessive. *Kragulj-Korac testimony; Board Ex. A.*

18. Respondent's case:

- a. Respondent contends that on the Form 131 it appears that Petitioner was contesting her tax bill. The Board has no jurisdiction to address appeals where the taxpayer only contests the taxes. *Hendron testimony; Resp't Ex. 1.*
- b. Respondent contends that if Petitioner felt there was an error or omission by the county in not applying a credit, deduction, or exemption, Petitioner should have filed a Form 133 which was a petition for correction of error in existence prior to July 1, 2017. *Hendron testimony.*
- c. Respondent contends the property's assessed value has not changed significantly since 2013. The value actually decreased between 2015 and 2016. If Petitioner received a statement from the assessor's office stating the assessed value was \$160,000, it was probably for the 2017 assessment year. *Hendron testimony; Resp't Ex. 2.*
- d. Respondent argues Petitioner has not presented any market evidence of value and thus failed to meet the burden of proof. *Hendron testimony.*

ANALYSIS

19. Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of

- the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
- c. To successfully make a case, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Petitioner failed to offer any evidence regarding the subject property’s market value-in-use. While the board finds it unlikely the property doubled in value, a taxpayer must present some evidence as to the correct value. Consequently, the Board finds Petitioner failed to make a prima facie case that the 2016 assessment was incorrect.
 - d. Petitioner made several statements about the increase in her property taxes. The Board lacks jurisdiction to hear general claims that a petitioner’s taxes are too high. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Indiana Code § 6-1.5-4-1 gives the Board authority to determine appeals concerning assessed valuation, deductions, exemptions, and credits. The Board therefore has no authority to address general disputes over taxes or tax rates.
 - e. Where a petitioner has not supported its claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

CONCLUSION

- 20. The Board concludes that Petitioner failed to make a prima facie case for a reduction in the 2016 assessed value. The Board also concludes that it does not have the authority to address Petitioner’s claim that her taxes are too high.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2016 assessed value should not be changed.

ISSUED: March 29, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.